



BULLETIN

LEGISLATIVE UPDATE 2000:

The Nebraska Unicameral met for 60 days this session, from January to April. The following is a summary of the bills passed during the last legislative session which relate to the workers' compensation system. Also included is a list of other bills passed by the legislature which pertain to the judiciary or state government. The bills may be accessed on the Unicameral's web site at <http://www.unicam.state.ne.us>.

BILLS RELATED TO WORKERS' COMPENSATION

Legislative Bill 1119 — Section 48-146.01 was amended to provide the Director of Insurance with the expanded authority to enter into an agreement with one or more workers' compensation insurers to provide insurance to assigned risk employers. If the Director determines that the cost of premiums for insurers to provide assigned risk coverage would be unreasonably high, s/he may enter into an agreement in which the assigned risk insurer covers a portion of the losses and the remaining losses could be assessed against all other workers' compensation insurers and risk management pools.

Effective date July 13, 2000.

Legislative Bill 1221 — This bill changes several sections of the Workers' Compensation Act.

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NEW RULE 70 ESTABLISHES SECURITY REQUIREMENT FOR SELF-INSURED EMPLOYERS

LB 1221, passed during the last legislative session, changed several sections of the Workers' Compensation Act, including Section 48-145. Among other things, 48-145(1) requires the court to establish security requirements for employers approved to self-insure their workers' compensation liability by rule. At a public hearing on May 8 the security requirements were adopted as the court's new Rule 70. LB 1221 and Rule 70 became operative on July 1.

Rule 70 confirms the alternatives for setting the security amount for self-insurers that were implemented by the court last fall. There are two methods for determining the amount of security required: the formula method and the actuarial method (refer to the Autumn 1999 Bulletin). Rule 70 not only sets out the two methods for calculating the amount, but also allows the court to consider reducing the security amount calculated by the formula method, if the corporation meets certain financial criteria.

At the discretion of the court, the security amount calculated using the formula method may be reduced by 25 percent or 50 percent. Eligibility for a reduction is based on the corporation's net worth, net profit, operational cash flow, and net worth to asset ratio. Regardless of the method used to calculate the amount of security or the reduction allowed, the security amount required will not be less than \$500,000.

Self-insured employers may ask the court to consider reducing the amount of security currently in effect, if the amount was calculated using the formula method. An authorized officer of the corporation should submit a written request on the corporation's letterhead, to Jerome Hakel, Workers' Compensation Auditor.

The court's Rules of Procedure, including the new Rule 70, are available for purchase from the court (see related article on page 4 and order form on page 5). Also, the Rule Book can be viewed from the court's website at: <http://www.nol.org/workcomp/>.

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- **Section 48-118** was amended to replace a reference to the Second Injury Fund with the Workers' Compensation Trust Fund.
 - **Section 48-120.02(2)(j)** was amended to state that workers' compensation managed care plans must provide adequate flexibility to allow employees to choose "a physician" (rather than "providers") from among those who provide services under the plan. Also, subsection (k) was amended to state that an employee must be allowed to change "the physician initially selected" (rather than allowing a change in "medical, surgical, or hospital service providers") under the plan at least once.
 - **Sections 48-122.01 and 48-124** were amended to extend the duration of payment of death benefits for dependent children from age 18 to age 19 consistent with the statutory age of majority under §43-2101, and to change the definition of presumed dependents to include children under age 19 rather than age 18.
 - **Section 48-128** was amended to merge the Second Injury Fund into the Workers' Compensation Trust Fund. Subsection (2) provides for the transfer of any money in the Second Injury Fund to the Workers' Compensation Trust Fund on the operative date of this act, or July 1, 2000.
 - **Section 48-144.04** was amended to replace a reference to the Second Injury Fund with the Workers' Compensation Trust Fund.
 - **Section 48-145** was amended to provide that 1) an employer seeking to self-insure must make application to the court and meet minimum standards, 2) the court will promulgate and adopt security requirements for self-insurers by rule and regulation, 3) a three-judge panel may, after notice and hearing, suspend or revoke approval as a self-insurer under certain circumstances.
 - **Section 48-155** was amended to eliminate the requirement that the presiding judge preside and make all rulings at all review hearings.
 - **Section 48-162.01** was amended to 1) provide for payments from the Workers' Compensation Trust Fund rather than the Vocational Rehabilitation Fund, 2) clarify that the court may hire vocational rehabilitation specialists without the requirement that they also be specialists in physical and medical rehabilitation, 3) add "specialists" to the list of approved service providers maintained by the court, and delete "private and public" delineation of rehabilitation facilities approved by the court, 4) provide that the court "may" rather than "shall" approve facilities, institutions, physicians, and other service providers, counselors and specialists.
 - **Section 48-162.02** was amended to 1) create the Workers' Compensation Trust Fund, 2) provide that payments for both Second Injury and Vocational Rehabilitation shall be made from the Workers' Compensation Trust Fund, and incorporate language from §48-128 regarding assessments and Attorney General's duties, 3) adjust minimum and maximum dollar levels used in determining the necessity of contributions, 4) provide for transfer of money from Vocational Rehabilitation Fund to Workers' Compensation Trust Fund on the operative date of this act.
 - **Section 48-174** was amended to state that return of service on a petition shall be made within seven days after the date the summons was issued by the court.
 - **Section 48-179** was amended to clarify that only a "final" finding, order, award, or judgment may be appealed. This conforms to existing wording in §48-182, and addresses a shortcoming noted in *Thompson v. Kiewit Constr. Co.*, 258 Neb. 323 (1999).
 - **Sections 48-195, 48-196 and 48-1,107** were amended to strike requirements that the compensation court approve actions by the State Claims Board and the Risk Manager relating to adopting and promulgating rules, delegating handling of workers' compensation claims and purchasing insurance policies.
- Legislative Bill 1221** — also includes the following change under Chapter 44:
- **Section 44-5016**, which relates to special assessments under the Property and Casualty Insurance Rate and Form Act, was amended to reflect the merger of the Second Injury Fund and the Vocational Rehabilitation Fund into the Workers' Compensation Trust Fund under §48-162.02.
- Operative date July 1, 2000.*

BILLS RELATED TO THE JUDICIARY

Legislative Bill 921 — Addresses several issues in civil procedure including an inconsistency between the discovery rules of the Supreme Court and hearsay statutes regarding use of a deposition when the witness is more than 100 miles away

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NEW MANAGER, SPECIALIST & SECRETARY FOR NWCC VOCATIONAL REHABILITATION SECTION

The Nebraska Workers' Compensation Court welcomes the latest additions to its Vocational Rehabilitation section. In the past few months it has gained a new manager, specialist and secretary.

Kris Peterson is the new Vocational Rehabilitation Manager. Kris is also the Manager of court's Coverage and Claims section. She replaces Dick Craig, who retired from the court on December 31, 1999.

Don Estes, MS, joined the court on April 17 as the new Vocational Rehabilitation Specialist. During a brief training period Don will be handling the Omaha cases. At some time in the near future, more

areas in Nebraska will be added to his case load.

Cordelia "Corky" Rathert is the new secretary for the Vocational

Rehabilitation section. She began her work with the court on December 20, 1999. Welcome aboard new Vocational Rehabilitation staff! ❖

CERTIFICATION STANDARDS TO BE ADOPTED FOR ALL NEBRASKA COURT INTERPRETERS

Pursuant to Nebraska R.R.S. § 25-2406, et. seq. (Reissue 1998, as supplemented) which was effective August 28, 1999, all court interpreters must be certified in accordance with standards adopted by the Nebraska Supreme Court. Certification standards are expected to be adopted by the Supreme Court this summer and the first certification test in Spanish will be offered in the fall. Nebraska will adopt, with some modification, model standards approved by the National Center for State Courts, now in effect in 21 states. ❖

TEMPORARY INJUNCTION ISSUED AGAINST INTEGRATED BUSINESS STRATEGIES

Effective April 6, 2000, the Douglas County District Court has issued a temporary injunction against Integrated Business Strategies of Nebraska, Inc. due to lack of workers' compensation insurance. The injunction prohibits Integrated Business Strategies, a professional employer organization, from operating a business in Nebraska with employees subject to the Nebraska Workers' Compensation Act without obtaining workers' compensation insurance. A petition has also been filed by the office of the Nebraska Attorney General seeking a permanent injunction and monetary penalties.

Clients of Integrated Business Strategies should take notice of the

injunction, and be aware that client employers have an independent obligation to make sure that workers' compensation insurance is obtained under the Nebraska Workers' Compensation Act.

With only a few exceptions, the Nebraska Workers' Compensation Act applies to every employer in the state who employs one or more employees in the regular trade, business, profession, or vocation of the employer. Thus, virtually all employees are covered by the workers' compensation law including employees of private industry, state and local government, part-time employees, minors, and employees of charitable organizations. Employers of

farm and ranch laborers and employers of household domestic servants are not automatically covered under the Act, but may elect to be covered.

Employers who are covered by the Act but fail to provide workers' compensation insurance may be subject to a fine of up to \$1,000 per day without insurance, imprisonment for not more than one year, and enjoinder from doing business in Nebraska until insurance is obtained.

For more information, please call the court's toll-free information line at (800) 599-5155 for callers in Nebraska or (402) 471-6468 for out-of-state and Lincoln callers. ❖

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from the place of trial or hearing. Under this bill, the discovery rules of the Supreme Court are specifically referred to as a source for hearsay exceptions.

Effective date July 13, 2000.

Legislative Resolution 291CA — Proposed constitutional amendment to change the effective date of compensation changes for the judiciary. The proposed amendment will appear on the ballot for the November 2000 general election.

BILLS RELATED TO STATE GOVERNMENT

Legislative Bill 628 — Changes requirements for the provision of copies of public records, including language which allows requester to designate the format in which the copies are to be made. Also provides for

fees which may be charged by custodian of records. In addition, provisions that were originally in Legislative Bill 1080 were amended into LB 628. State agencies are authorized to accept digital or electronic signatures, and to accept communications in an electronic format. All such uses by a court would be subject to the rules of the Supreme Court. The Secretary of State is charged with promulgating and adopting rules and regulations.

Effective date July 13, 2000.

Legislative Bill 929 — Adopts the Uniform Electronic Transactions Act. Allows the use of electronic records and electronic signatures in any transaction, and sets out procedures governing same.

Certain provisions of this bill become effective July 13, 2000, and other

provisions become operative July 1, 2001.

Legislative Bill 1192 — Addresses the collection, accuracy and storage of data by the Nebraska Public Employees Retirement System. The changes are technical in nature.

Effective date March 22, 2000.

Legislative Bill 1349 — Amends the Information Technology Infrastructure Act to provide a flexible tool for funding specific information technology projects, as authorized by the legislature. A percentage of cigarette taxes will be allocated to the Infrastructure Fund. (An example of a project funded by the Infrastructure Fund is the replacement of NAS/NIS, the state's accounting system.)

Certain provisions of this bill become effective July 13, 2000, and other provisions become operative July 1, 2001.❖

SUMMER 2000

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